

DETAILED ACTION

This is the first Office Action for application number 10/585,272, ADJUSTING DEVICE AND FIXING DEVICE, filed on 6/22/06. Claims 1-22 are pending.

Information Disclosure Statement

The information disclosure statement submitted on 9/24/08 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: milled key face 24. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1 and 7 are objected to because of the following informalities:

Appropriate correction is required.

Claim 1, line 2 recites "attachment bodies 4 locally fixed fixation". This should be changed to "attachment bodies for locally fixed fixation".

Claim 7 recites, "into the inner threat" in line 4 and this should be changed to "the inner thread".

Claim 16, line 9, recites, "for the shell of a sphere part" and this should be changed to "or the shell of a sphere part.

Note: Many of the claims contain phrases that are not grammatically correct and contain direct translation phrases that are not easily understood. Correction is requested.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 15 recites that the pressure faces are made from "high strength" and have "surface hardness", however the specification has not adequately described as to what these materials would be included .

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 8-10, 12, 13 and 15-20 and are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. NOTE: The claims were replete with antecedent issues. All claims must be corrected. The list below is not an exhaustive list, but merely examples of the issues that need to be addressed.

Claim 6 recites the limitations, "the cylindrical tube" and "the formed tube". There is insufficient antecedent basis for these limitations in the claim.

Claim 6 recites, "preferably the holding part is formed by a retaining ring". The "preferably" language makes it unclear if the claim is claiming a retaining ring. This pertains to any other location of the term "preferably" such as claims 9, 12, 16 and 19 for examples.

Claim 8 recites the limitation "the attachment bolt" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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Claim 9 recites the limitations, "the attachment part" and "the attachment bolt". There is insufficient antecedent basis for these limitations in the claim.

Claim 10 recites the limitation "the depth" in line 4 and "the diameter" in line 5, "the key width" in line 4. There is insufficient antecedent basis for these limitations in the claim.

Claim 11 recites the limitation "the ball parts". There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites, the "milled key face" and it is unclear as to what this is referring.

Claim 15 recites that the pressure faces are made from "high strength" and have "surface hardness", and these terms "strength and hardness". The terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 17 recites, "in particular at façade front placements" and it is unclear as to what is meant by the phrase.

Claim 18 recites that the base bodies are "decomposable" which has been taken to mean can be disassembled. The term "decomposable" is not generally used in this manner. Furthermore, the term "and/or" makes the claim unclear as to whether the limitation is included.

Claim 19 is unclear. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of

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the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 19 recites the broad recitation 10 to 45 degrees, and the claim also recites 30 degrees which is the narrower statement of the range/limitation.

Claim 20 recites the limitation "the scoring" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 10, 12-15, 17, 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5419533 to Lueke et al.

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The patent to Lueke et al. discloses an adjusting and fixing device comprising a cylindrical tube base body (16) and one or several thereupon supported attachment bodies for locally fixed fixation of at least two building components at a distance from each other characterized in that two ball attachment bodies (17a, 17b) are rotatably and swivelably inserted into each end region of the base body, are spaced a distance from each other on either ends of the tube of the base body and wherein the attachment body is held toward the outside and wherein in each case a pressure body (33a, 33b) shiftably follows inwardly to the base body, wherein the wedge piece (31) shiftable at a right angle relative to the shifting direction of the two pressure bodies is disposed and fixes with this pressure body the attachment body wherein the attachment bodies coordinated to these pressure bodies are fixed and an attachment bolt (11a, 11b) fixedly attached to the ball part and is a forged single piece, and wherein an attachment part (3) is attached that the free end region of the attachment bolt (9), and that the attachment part (3) has an angle piece and in that the edge of the tube of the base body coordinated to an attachment bolt is furnished with at least one recess (18a), wherein the width of the recess and the depth of the recess correspond at least to the diameter of the attachment bolt and in particular to the key width of the hexagon profile of the attachment bolt, and that the wedge piece is formed as a pressure piece which engages and is centered into the tube of the base body wherein a thread (21) follows toward the outside at the pressure wedge and that the tube of the base body is furnished with a formed in inner thread (in 39), with a bore hole for the wedge piece formed as a pull wedge with thread and with a milled key face (40) for the seat of a nut

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and wherein the wedge piece is guided at the oppositely disposed side of the tube of the base body in a guide bore, in that the attachment bodies next to each other disposed are aligned and fixed to the attachment bolt at facade front placements, spatially alternating and deviating in three spacial directions, in the kind of webs of grid carriers, the attachment bodies and the pressure bodies being exchangeable, a passage opening (in 3) for an attachment bolt.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5419533 to Lueke et al. and in view of United States Patent No. 6352228 to Buerklin.

The patent to Lueke et al. discloses applicant's basic inventive concept including teaching wherein pressure bodies are shiftably supported with low play in the tube of the base body and exhibit forms adapted to the ball parts. Lueke et al. does not teach that a retaining ring which is the holding part for any play in the tube, the retaining ring inserted into a recess in the tube thereby narrowing the diameter and wherein the pressure bodies exhibit a ball shaped convex pressure face (18).

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Buerklin teaches a ball and socket, with a wedge piece (16) and pressure bodies (25) which have a concave shape for accommodating the ball and wherein a retaining ring (10) which is the holding part for any play in the tube, the retaining ring inserted into a recess in the tube (2) thereby narrowing the diameter and reducing play in the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Buerklin to have added a retaining ring in order to reduce the amount of play in the desired device.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5419533 to Lueke et al. and in view of DE 101 22 533 A1.

The patent to Lueke et al. discloses applicant's basic inventive concept, all the elements which are shown above with the exception that it does not show wherein the ball has an inner thread, the attachment body has an outer threaded in order for the two pieces to be threadedly connected.

DE 101 22 533 A1 teaches a ball (4) which has an inner thread, the attachment body has an outer threaded in order for the two pieces to be threadedly connected. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made used this connection mechanism in order to securely attach the desired parts.

Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5419533 to Lueke et al. and in view of United States Patent Publication No. 2006/0000957 to Carnevali.

Although Lueke et al. does not specifically teach that the ball is attached to the attachment bolt by adhesive, it would be obvious to one of ordinary skill in the art from the teachings of Carnevali to have attached the ball (17) to the attachment bolt (73) by any suitable method (See page 4, paragraph 0032) including adhesive bonding or using any strength or hardness suitable material, because the use of such has a predictable result. (See KSR v. Teleflex, 550 U.S., 127 S. Ct. 1727 (2007)).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5419533 to Lueke et al. and in view of United States Patent No. 4492488 to Warshawsky.

The patent to Lueke et al. discloses applicant's basic inventive concept, all the elements which are shown above and including teaching with the that the pressure body has a face disposed toward the coordinated ball part with at least one back center (28). Lueke et al. does not teach a compression spring inserted between the pressure body and the ball part.

Warshawsky teaches a ball (84) with pressure bodies (100) and a compression spring (106) inserted between the pressure body and the ball part, used so that the ball is biased toward the top of the tube. Therefore it would have been obvious to one of

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ordinary skill in the art from the teachings of Warshawsky to have used a compression spring to bias the ball to the outer edge of the tube, for a secure fit of ball in tube.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5419533 to Lueke et al. and in view of United States Patent No. 711,622 to Fergusson.

The patent to Lueke et al. discloses applicant's basic inventive concept, all the elements which are shown with the exception that it does not teach wherein an attachment bolt has scoring and is angled off at the attachment body at an angle to the axis of the attachment bolt of from about 10 to 45 degrees, in particular of 30 degrees.

Fergusson teaches a ball (30) with an attaching device (26) which is scored and positionable at any angle desired. Therefore it would have been obvious to one of ordinary skill in the art from the teachings of Fergusson to have used any desired angle attachment device in order to be able to accommodate the desired attachment.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5419533 to Lueke et al. and in view of European Patent No. 0 417 566 to Schulz.

Lueke et al. teaches the basic inventive concept, all the elements which are shown with the exception that it does not teach wherein in that the attachment part of the attachment bolt furnished with the scoring is formed an impression for the attachment bolt and is furnished in the loose angle piece running at a right angle to the

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angling off and equipped on the inside with grooves and is furnished with an attachment arrangement for attaching at frame parts preferably for the attachment at frame parts made of wood.

Shulz teaches a ball (21) with a right angle pieces (3) which has a groove designed for attachment to a frame made of wood (2). Therefore it would have been obvious from the teaching of Shulz to have attached the device to any desired device.

Conclusion

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823 or to Supervisor Allen Shriver at 571-272-6698 if the examiner cannot be reached. The examiner can normally be reached (Mon-Fri 8am-5:00pm). The fax machine number for the Technology center is 571-273-8300 (formal amendments), informal amendments or communications 571-273-6823. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

/Amy J. Sterling/
Primary Examiner, Art Unit 3632
2/27/09